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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Petition of the California Public Utilities Commission)	
and the People of the State of California for Delegation)	NSD File No. L-98-136
of Additional Authority Pertaining to Area Code Relief)	CC Docket 96-98
and to NXX Code Conservation Measures)	

COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.

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SUMMARY

Level 3 Communications, Inc. ("Level 3") commends the California Public Utilities Commission and the People of the State of California (collectively, the "CPUC") for their initiative in attempting to address the problems associated with NXX code shortages. Several of the CPUC's proposals could prove helpful in making better use of the numbering resources currently deployed in the telecommunications market. For example, allowing the CPUC to reclaim inactive NXX codes after an established period of time and pursuant to well-defined safeguards and procedures will promote greater accessibility to a carrier's reserves of NXX codes that might otherwise be unavailable for use by other carriers. Similarly, giving the CPUC the authority to compel the return of unused NXX codes would appear necessary if the measures discussed above are to be effective.

There are number of respects, however, in which Level 3 believes that the CPUC's Petition would undermine the establishment of national numbering administration procedures. Thousands block number pooling, individual number pooling, and efficient number use practices are all under consideration in an open Common Carrier Bureau proceeding and in a recently issued Notice of Proposed Rulemaking. All proposed measures require further discussion, development, and uniform resolution before they are turned over to states or to the numbering administrators for implementation.

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**COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.**

Level 3 Communications, Inc. ("Level 3"), by undersigned counsel and pursuant to the Common Carrier Bureau's May 14 Public Notice,¹ hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network across the U.S., connecting 25 cities. Level 3's network will be completed in phases by 2001. The company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network. As a facilities-based provider of local services, Level 3 is dependent upon access to numbering resources to serve customers in order to expand its operations.

Level 3 welcomes the initiative on the part of the California Public Utilities Commission and the People of the State of California (collectively, the "CPUC") to address the issues associated with NXX code shortages. Indeed, the inability of a carrier to obtain NXX codes and telephone numbers

¹ See *Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority Pertaining to Area Code Relief and to NXX Code Conservation Measures*, NSD File No. L-98-136, DA 99-928, Public Notice (rel. May 14, 1999).

is a significant, artificial barrier to competitive entry and expansion. Level 3 agrees that many of the proposed measures could remedy the exhaust situations plaguing several Numbering Plan Areas ("NPAs").

However, there are several aspects of the proposal in which Level 3 believes that the CPUC's approach is inappropriate. Rather than looking to novel measures as a panacea for code exhaust, the CPUC should use more tested and reliable means of increasing access to telephone numbers. A number of operational and competitive wrinkles remain with alternative conservation measures such as number pooling, and it would be inefficient and burdensome, for example, for carriers to comply with what could possibly become more than 50 different kinds of pooling mechanisms. Level 3 believes that only after effective uniform solutions to these alternative conservation measures have been developed – in the context of the Commission's current number policy rulemaking² – and then tested should the states be encouraged to implement them.

II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE CPUC COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.

Level 3 supports the following number conservation measures for which the CPUC seeks delegated implementation authority from the Commission.

A. Ordering Carriers to Return to the Code Administrator Unused NXX Codes

Level 3 believes that allowing the CPUC to reclaim inactive NXX codes from carriers is a reasonable and technically feasible means of making more efficient use of numbering resources.³

² See *In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200, Public Notice (rel. June 2, 1999) [*hereinafter* *Numbering NPRM*].

³ See CPUC Petition at 13-14.

The primary question, however, comes in the timing of such reclamation. It is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. In fact, many competitive local exchange carriers ("CLECs") may order NXX codes months in advance of entering a rate center to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans. The Commission should ensure that if the CPUC is given authority to reclaim inactive or unneeded codes, appropriate safeguards are in place so that the state or numbering administrator is not given an inordinate amount of power over carriers' business plans. Among other things, the Commission may want to direct that the CPUC may only take action to reclaim an unused NXX code if the carrier has held the code for at least one year.⁴ Further, the Commission should make clear that any delegation of authority to the CPUC with respect to the reclamation of NXX codes only applies to those inactive codes, and not to any codes that are subjectively determined by state regulators to be unneeded.

B. Returning Unused or Under-utilized Portions of NXX Codes to the Pooling Administrator When One is Selected

To the extent that the CPUC seeks the authority to compel the return of unused NXX codes, Level 3 agrees that under certain circumstances, self-policing may not be effective. For example,

⁴ Level 3 recognizes that current industry numbering guidelines provide for carriers to return NXX codes to the numbering administrator if a code is no longer needed or is not activated within six months. In some cases, however, customer demand (or lack thereof) may cause a carrier to delay activating until several more months have passed. In light of the uncertainty of customer demand at times and the voluntary nature of the NXX code return set forth in the numbering guidelines, the CPUC should not be permitted to take enforcement action to reclaim an inactive code until at least one year has passed.

the CPUC may need the authority to compel the return of NXX codes that have been held inactive by a carrier for more than one year. However, Level 3 does not agree that the CPUC should have the authority to mandate the return of under-utilized NXX codes. The grant of such authority would imply that the CPUC has the ability to institute mandatory number pooling. As explained in greater detail below, number pooling is a measure that requires greater development on a national level before it can be turned over to the states for administration and enforcement. It also involves the implementation and use of number portability – a matter that is clearly within this Commission’s jurisdiction and over which the states cannot exercise any authority.⁵ Thus, until the Commission has completed its analysis of number pooling and promulgated strict guidelines governing its use, the Commission should not allow the CPUC to implement or enforce compliance with these kinds of conservation measures.

⁵ See Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods* (Oct. 20, 1998) [*hereinafter NANC Report*]. The *NANC Report* makes clear in several instances that the states should not be given authority to compel the implementation of local number portability even if they are granted authority to administer pooling.

III. STATES SHOULD NOT BE PERMITTED TO UTILIZE UNTESTED METHODS OF NUMBER CONSERVATION THAT ARE SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.

Although Level 3 supports several aspects of the CPUC's Petition, Level 3 believes the Petition should be denied in part because it would undermine national efforts to develop uniform number administration procedures.

A. Thousands Block Number Pooling

The CPUC proposes to order one or more mandatory number pooling trials, which could include 1,000-block pooling and individual telephone number ("ITN") pooling.⁶ While Level 3 agrees that such measures may provide more efficient use of telephone numbers, much debate, discussion, and implementation remains before mandatory pooling can be considered an appropriate number conservation mechanism to which carriers in the marketplace should be bound.

As evidenced by its release of the *Numbering NPRM*, the Commission agrees that an in-depth inquiry is required before number pooling is adopted.⁷ The *Numbering NPRM* recognizes the intricacies and complexities involved in implementing a method for number pooling that will efficiently use existing network resources to address the larger problem of number exhaust.⁸ Indeed the North American Numbering Council Report ("*NANC Report*"), which gives a fairly thorough overview of the technical, financial, and administrative implication of number policies, makes clear that there are still many issues – such as the establishment of a 10% block contamination threshold

⁶ See CPUC Petition at 8-10.

⁷ See generally *Numbering NPRM*, *supra* note 2.

⁸ See *id.* at ¶¶130-138 (seeking comment on how to achieve the goal of implementing pooling in areas where the benefits of pooling outweigh its cost).

and block assignment guidelines – that must be addressed before number pooling is deployed. In seeking comment on related issues, such as cost recovery and numbering administration, the Commission recognizes that a uniform, comprehensive solution is required in order to find a solution to the complex national problem of number exhaust.⁹

Since the Commission is pursuing a uniform, comprehensive plan that would solve the issue of number exhaust on a national level, it should not grant the CPUC authority to pursue loosely defined number conservation measures. The Commission envisioned that states would come forward with detailed plans for number conservation and not request delegated authority to develop specific plans.¹⁰ While the CPUC argues that it needs delegated authority before it can begin the process of determining the best number conservation measures,¹¹ the Commission risks that the CPUC will institute a system that is unrelated to, or even inconsistent with, the measures the Commission will adopt as a result of the pending rulemaking. Such a scenario would result in carriers having to conform their telecommunications systems to state requirements only to re-engineer the same systems to comply with federal requirements. In the process, consumers could bear the brunt of the cost as carriers pass through the expense of complying with two incompatible regulatory regimes.

⁹ See *id.* at ¶¶ 193-210.

¹⁰ See *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, CC Docket No. 96-98, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009 at § 31 (1998) ("*Pennsylvania Order*").

¹¹ See CPUC Petition, at 10.

The competitive implications of mandatory pooling on carriers that are not yet required to implement Local Number Portability also merit careful consideration and resolution before states are given the authority to compel participation in a pooling program. The CPUC has not addressed how it will minimize the damage to competition which may result from these proposals. Moreover, simply forcing carriers with only one or two NXX codes to pool those codes will have a significant impact on the cost structure of local exchange services. This will upset established business plans and may force carriers to withdraw from some markets altogether. Thus, even if pooling were adopted, carriers should be allowed to exempt a minimum number of NXX codes from the pool.

The Commission should therefore ensure that operationally sound and competitively neutral pooling guidelines are finalized before the states are given authority to compel participation.¹² The Commission already has a Notice of Proposed Rulemaking and a proceeding underway to arrive at just such a result. To allow California to embark on a number pooling effort that could vary considerably from pooling measures that the Commission ultimately adopts will only complicate the situation, cause consumers more confusion, and generate unnecessary societal costs. The Commission should not give states experimental authority to compel participation in pooling schemes before it has clarified what the final national pooling guidelines should be. The prospect of 50 state governments erecting different pooling mechanisms presents a substantial technical and administrative burden for carriers. Given the vast disparity in resources among carriers, these burdens could prove to have a significant impact on the ability of smaller carriers to compete on a national basis. Level 3 therefore respectfully requests that the Commission decline to award the

¹² Level 3 recognizes that pooling guidelines were issued by the Industry Numbering Committee in January 1999. These guidelines do not, however, resolve conclusively the matters still open for consideration before this Commission in the context of the *NANC Report*.

CPUC (or any other state commission) the authority to implement a mandatory pooling mechanism until: (i) comprehensive uniform federal pooling guidelines have been finalized and implemented; (ii) pooling has been demonstrated to work in terms of providing carriers with access to thousands number blocks as needed; and (iii) carriers are ensured that they will be able to recover the costs associated with implementing a pooling mechanism.

B. ITN Pooling

As noted above, in addition to 1,000-block pooling, the CPUC proposes to explore ITN pooling.¹³ As in the case of thousands block number pooling, however, this mechanism is too undeveloped to allow experimentation. The *NANC Report* makes clear that there are a number of unresolved matters with ITN pooling. Indeed, even the Commission itself has determined not to pursue ITN pooling at this time because of the length time it would take to implement and the fact that the technical and administrative standards are not as advanced as other pooling methods.¹⁴

Thus, Level 3 submits that the Commission should not undermine its own process by giving the CPUC authority to experiment with this number conservation mechanism. Moreover, because ITN pooling involves technical, operational, economic, and competitive questions that are similar to those involved in the consideration of thousands block number pooling, Level 3 submits that ITN pooling should likewise be addressed at the federal level before its implementation is delegated to the states. The *NANC Report* summarizes this best when it notes that "the architecture, provisioning methodologies, administrative procedures, and interfaces used to support ITN pooling shall be

¹³ See CPUC Petition, at 9.

¹⁴ See *Numbering NPRM*, *supra* note 2, at ¶ 141.

uniform nationwide."¹⁵ The Commission should therefore deny the CPUC's request for expanded authority over ITN pooling.

C. Efficient Number Use Practices

The CPUC proposes that it be given the explicit authority to "adopt efficient number management practices such as 'fill rates.'"¹⁶ Level 3 objects to the delegation of such numbering authority because the establishment of minimum fill thresholds would artificially limit the geographic scope of carriers' operations. For example, a carrier may only serve customers in a rate center in an amount equaling 15% of its NXX code for that area. Yet the carrier may see a significant opportunity to attract a sizeable customer base in another rate center. If the carrier is denied the ability to obtain a NXX code to serve that second rate center simply because it was unable to attract enough customers in its first rate center, this creates an unjustified, and possibly unlawful, artificial barrier to entry. While it is unclear from the Petition whether number pooling and minimum fill rates would be used together, Level 3 believes that mandatory pooling measures are at this point unreliable and should not be implemented in California for the reasons identified above. Accordingly, without number pooling in place, this minimum fill rate proposal should also be rejected because it unnecessarily intrudes upon carriers' business plans and impairs their ability to expand service to California consumers in geographic areas they do not serve.

It is unclear what other "efficient number management practices" are intended as the CPUC states that it will work with the industry to develop such practices.¹⁷ Level 3 does object, however,

¹⁵ *NANC Report*, *supra* note 5, at 42.

¹⁶ CPUC Petition, at 10-11.

¹⁷ CPUC Petition, at 11.

to any delegation of authority that would allow the CPUC to conduct utilization surveys.¹⁸ These surveys would be used to determine whether a carrier is complying with the minimum fill rates and deserves another NXX code. A carrier whose utilization survey indicated that it was not meeting the CPUC's defined minimum fill would be ineligible to receive any more NXX codes in California. In essence, this mechanism works in tandem with the minimum fill rates to unnecessarily limit the geographic scope of a carrier's operation. Level 3 therefore urges the Commission to reject this survey proposal, and the minimum fill rate, along with the mandatory number pooling mechanisms discussed above.

The CPUC's Petition also indicates that it is seeking the authority to require sequential numbering of NXX codes.¹⁹ One of the most important options new carriers offer their customers is the ability to select telephone numbers. There are obvious business advantages to having vanity numbers that relate to a given customer's trade. Many customers consider this option a necessity and will only add services if they are able to obtain a desirable number. In addition, customers with multiple lines often demand that their telephone numbers be assigned in blocks that make logical sense. For example, if a customer needs fifty lines, they will request the numbers between NXX-XX00 and XX50. But if carriers are required to assign numbers consecutively and the next number up is NXX-XX19, they will not be able to offer their customers the simplicity they require. Thus, if carriers are forced to assign numbers consecutively, they will not be able to provide customers the flexibility to choose numbers that meet their business needs. Thus, requiring all code holders to assign their numbers consecutively will reduce the availability of numbering services upon which

¹⁸ See CPUC Petition, at 13-14.

¹⁹ See CPUC Petition at 11.

consumers have come to rely. This is contrary to the 1996 Act's purpose of promoting new and inexpensive services.²⁰ Level 3 therefore urges the Commission to deny the CPUC the authority to impose such a requirement.


²⁰ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble (1996) (Preamble) (purpose of the act is to promote competition, secure lower prices and higher quality services and encourage rapid deployment of telecommunications services).

IV. CONCLUSION

Level 3 commends the CPUC for taking a pro-active approach to resolving the problems of NXX code exhaust. Many of the proposals set forth by the CPUC may ultimately assist in making much more efficient use of existing number resources. The problem, however, with some of these proposals comes in their timing and the method of implementation. Many of the CPUC's proposed measures simply are not ready for deployment in the market, and the testing and implementation of these measures needs to be part of a coordinated national effort. In this case, allowing the states to experiment with number pooling and related measures would only lead to inconsistency on a state-by-state basis in resolving technical, administrative, and competitive concerns. The Commission should therefore grant the CPUC a limited delegation of authority consistent with the recommendations set forth herein, but it should otherwise proceed within the context of its own number optimization docket to establish national guidelines governing the use of thousands block number pooling, ITN pooling, and related measures.

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